Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight	)	WC Docket No. 05-195
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21

COMMENTS OF THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES AND THE WESTERN TELECOMMUNICATIONS ALLIANCE

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EXECUTIVE SUMMARY

Rural ILECs are committed to protecting the integrity of the High-Cost program, since it is integral to their ability to provide high-quality services at affordable rates. However, a widespread, unfocused independent audit requirement applied to rural ILEC high-cost support recipients would be a waste of both the carriers' and the government's resources. Rural ILECs' financial data is already subject to several layers of review, including those conducted by NECA, independent financial auditors, and state commissions. These reviews strengthen the integrity of rural ILECs' data, and prevent waste, fraud, and abuse of the high-cost funds they receive.

If, despite these multiple safeguards, the Commission still decides that independent audits of rural ILECs are necessary, they should be *targeted* to ensure the most judicious use of carrier and government resources. Specifically, a two-step process should be established to determine which rural ILECs, if any, would be subject to independent audits. First, a threshold of 0.1 percent of the size of the total High-Cost program should be adopted. Rural ILECs that receive less than 0.1 percent of the total High-Cost program should be automatically exempt from an audit requirement. Second, for those rural ILECs whose support exceeds the 0.1 percent threshold, a risk identification mechanism should be applied. An independent audit requirement should be imposed only if the mechanism indicates that the carrier poses a significant risk of misconduct. Together, these two "screening tools" would maximize the potential benefit derived from any audits performed on rural ILECs while minimizing any unnecessary burdens imposed on these carriers.

For those rural ILECs subjected to an independent audit requirement, the Commission should permit the auditing firm that normally reviews the carrier's financial statements and

internal controls to simultaneously audit their receipt and use of high-cost support. In addition, a rural ILEC and its customers should not be required to absorb the cost of a required audit; those costs should be an administrative expense of the USF. It is also important that any audits of high-cost rural ILECs distinguish between intentional fraud, negligence, and ministerial error.

For rural ILECs, there is already a mechanism in place to recover inaccurate support payments. If NECA discovers a discrepancy in the data submitted by rural ILECs for the calculation of high-cost support, payments are corrected.

Prior to imposing an independent audit requirement on contributors, the Commission should first determine if there is a pattern of persistent non-compliance with the contribution rules. If the Commission determines that contributor audits are necessary, a contribution threshold of 0.15 percent of the projected contribution base of the total USF should be established.

The existing reporting requirements for rural ILECs that receive high-cost support work well and should remain in place. In particular, the Commission should not require rural ILECs to submit the same investment and expense data to USAC that they already submit to NECA, as it would be unnecessarily redundant. In addition, rural ILECs should not be required to certify the accuracy of their projections and forecasts, because their long, sporadic investment cycles and external forces beyond their control can greatly impact the accuracy of these projections. Furthermore, the Commission should not consolidate all of the rules governing the High-Cost program at this time, since there are open proceedings at the Commission that will likely cause changes to the high-cost support rules.

The disbursement process for the various mechanisms within the High-Cost program should remain separate. Rural ILECs have accounting procedures in place to properly record the funds they receive, and a single, uniform disbursement process would require rural ILECs to expend limited resources to change these procedures.

The true-up process should not include a requirement that rural ILECs pay interest on the difference between projected and actual amounts if a discrepancy exists between the two. Rural ILECs' long, sporadic investment patterns can result in significant fluctuations in their costs, and thus they should not be penalized for good-faith estimates that ultimately prove to be inaccurate. Additionally, the Commission should not mandate that data be submitted earlier in order to facilitate true-ups. The current deadline allows carriers to make corrections based on any errors or omissions that are identified.

The Commission should not seek to replace the permanent, designated administrator of the USF without first conducting a thorough review of USAC's performance measured against specific performance goals or targets. In addition, in order to ensure that rural ILECs can continue to provide universal service in the event of a shortfall in the USF, it is essential that USAC's ability to request borrowing authority be retained. Finally, carriers that are delinquent in making their USF contributions or filing FCC Form 499-A should be given an initial warning and an opportunity to provide an explanation for their delinquency prior to any assessment of penalties or interest.

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COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
WESTERN TELECOMMUNICATIONS ALLIANCE

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the Western Telecommunications Alliance (WTA) hereby submit these comments in response to the Notice of Proposed Rulemaking and Further

Notice of Proposed Rulemaking in the above-captioned proceedings.[1] The NPRM seeks comment on ways to improve the management, administration, and oversight of the Universal Service Fund (USF).

OPASTCO is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

WTA is a trade association that was formed by the merger of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents approximately 250 rural telephone companies operating west of the Mississippi river.

For many rural ILECs, high-cost universal service support comprises a significant portion of their cost recovery and operating cash flow. Thus, these carriers are committed to maintaining the integrity of the High-Cost program, since it is integral to their ability to provide high-quality services to all of their customers at affordable and reasonably comparable rates. Given this motivation, OPASTCO and WTA support reasonable, well-considered measures to protect the USF. However, a widespread, unfocused independent audit requirement for rural ILEC high-cost support recipients would impose administrative burdens that far outweigh any benefits, and redirect rural carriers' limited resources away

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[1] *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6; *Rural Health Care Support Mechanism,* WC Docket No. 02-60; *Lifeline and Link-Up,* WC Docket No. 03-109; *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 05-124 (rel. June 14, 2005) (NPRM).

from the provision of universal service. Also, rural ILECs' financial data is already subject to several layers of review, which strengthens the integrity of the data, and prevents waste, fraud, and abuse of the high-cost funds these carriers receive.

If, however, the Commission determines that independent audits of rural ILEC high-cost support recipients are necessary, it is crucial that the audits be *targeted* to those carriers for whom it is most justifiable. In addition, the audits should be permitted to be incorporated into the rural ILECs' regular external audits, and the costs of the mandated audits should not be imposed on the affected carriers and its customers.

In addition, any changes to the application or disbursement processes associated with the High-Cost program must avoid imposing needless administrative burdens on rural ILECs. Furthermore, the Commission should not consider replacing the permanent, designated administrator of the USF without first thoroughly reviewing the Universal Service Administrative Company's (USAC) performance using specific performance goals or targets.

II. A WIDESPREAD, UNFOCUSED INDEPENDENT AUDIT REQUIREMENT APPLIED TO RURAL ILECS WOULD BE A POOR USE OF BOTH CARRIER AND GOVERNMENT RESOURCES

A. Rural ILECs' financial data is subject to several layers of review, making a broad independent audit requirement unnecessary for these carriers

OPASTCO and WTA members are committed to maintaining the integrity of the High-Cost program and preventing the waste, fraud, or abuse of the funds collected from the nation's ratepayers. The public should have the utmost confidence that the USF that they pay for is being used judiciously, for the purposes for which it is intended, and is not being defrauded. Not surprisingly, there is no indication that pervasive waste, fraud, or abuse is occurring among rural ILEC high-cost support recipients. Therefore, a widespread, unfocused independent audit requirement applied to rural ILECs would be a waste of both the carriers' and the government's resources.

Rural ILECs' financial data is already subject to several layers of oversight which make a broad independent audit requirement for these carriers superfluous. To begin with, the National Exchange Carrier Association (NECA) has implemented sophisticated methods for reviewing and validating the various data submitted by its member companies that are used in the universal service support calculations. These processes include validation of cost studies and reviews of USF loop count data. NECA routinely reconciles all cost study information with financial data compiled according to the Commission's Uniform System of Accounts.

NECA relies upon financial data certified by company officials and statements issued to carriers by their independent auditors to ensure that financial information provided to it for high-cost funding purposes is in compliance with Commission rules. As such, NECA's data collection and review processes are complementary to those of the USF Administrator and should be taken into account as the Commission considers independent audit requirements in this proceeding.

In addition to the NECA review process, the majority of rural ILECs are required to have an annual audit performed on their financial statements by an independent auditor. This is particularly true for those carriers that borrow funds from the Rural Utilities Service (RUS). In addition, in most states, rural ILECs are required to submit a financial data report to their state commission which must be certified and may be subjected to review.

Moreover, unlike competitive eligible telecommunications carriers (CETCs) in rural service areas, the support received by rural ILECs is based almost entirely on their own past actual investment and expense payments. In other words, the high-cost support rural ILECs receive is cost recovery for network investment that has already been made. This provides a very high level of assurance that the high-cost support rural ILECs receive is used for appropriate purposes.[2]

With these multiple layers of review, requiring a rural ILEC to undergo a detailed audit, without just cause, would impose a disproportionate administrative burden that would far exceed any potential benefit. More importantly, it would divert their limited resources from the provision of high-quality service to rural customers, thereby hindering the achievement of the primary objective of high-cost support.

B. An independent audit requirement should only apply to those rural ILECs that receive support that exceeds a certain percentage-based threshold level of support <u>and</u> that appear to pose a significant risk of wrongdoing; the costs of any required audits should be an administrative cost of the USF

Despite the multiple safeguards already in place, if the Commission still believes that independent audits are necessary for rural ILECs, then such a requirement should be *targeted* to ensure the most judicious use of carrier and government resources. Certainly, there is no need for an independent audit requirement to be applied randomly or, worse yet, to all high-cost rural ILECs. Specifically, an independent audit requirement should apply only to those rural ILECs that receive support amounts that exceed a certain threshold level of support <u>and</u> should be further targeted to those carriers that appear to pose a significant risk of wrongdoing.

[2] On the other hand, it is far more difficult to discern how CETCs in rural service areas are using support that is based on the *incumbent's* record of investment. This is why OPASTCO has repeatedly recommended that support for CETCs in rural service areas be based on their own embedded costs. There is no basis to presume that providing CETCs with the ILEC's identical per-line support amount will provide each CETC with "sufficient," but not excessive support, as called for by Section 254(b)(5) of the 1996 Act.

OPASTCO and WTA support the establishment of a threshold level of support that, for rural ILECs that fall below it, would disqualify them from the possibility of being subject to an independent audit requirement. As the Commission recognized, the cost of independent audits could outweigh the benefits where USF recipients only receive a small amount of support.[3] The threshold should be a percentage of the total size of the High-Cost program. In other words, rural ILECs should only face the possibility of being subject to an independent audit requirement if their support amount exceeds a particular percentage of the total size of the High-Cost program.

A percentage-based threshold would be able to withstand changes to the size of the High-Cost program better than a dollar-based threshold. For example, if the size of the High-Cost program were to grow significantly due to the addition of a supported service, or as a result of intercarrier compensation reform, many more rural ILECs would begin exceeding an established dollar-based threshold than did previously. However, rule changes that effect the size of the entire program and the amount of support that most carriers receive would probably have less of an impact on the percentage of the program that a particular carrier's support amount represents. As a result, it is less likely that there would be a large shift in the number of carriers that exceed or fall below a percentage-based threshold and therefore the Commission would not have to adjust the threshold as often to account for changes to the program.

OPASTCO and WTA recommend the adoption of a threshold of 0.1 percent of the total size of the High-Cost program. This threshold should be applied at the study area level, which is consistent with the level at which support is calculated. Applying a 0.1 percent

[3] NPRM, ¶77.

threshold to USAC's High-Cost fund size projections for 4th quarter 2005 would include 168 rural ILEC study areas.[4] This would establish a reasonable universe of rural ILECs for which an independent audit could potentially be applied while excluding those carriers that do not receive enough support to justify the costs of the audit.

However, to be clear, OPASTCO and WTA are not advocating that an independent audit requirement apply to all rural ILECs whose support level exceeds a 0.1 percent threshold. In addition to the 0.1 percent threshold, the Commission should further narrow the field of rural ILECs to whom an independent audit requirement would apply by developing a risk identification mechanism. This mechanism would identify those rural ILECs that pose the greatest risk of improper conduct with respect to the High-Cost program.

Thus, determining which, if any, rural ILECs are subject to an independent audit requirement would be a two-step process. Under step one, those rural ILECs whose high-cost support level is below the 0.1 percent threshold would be automatically exempt from an audit requirement. Under step two, the risk identification mechanism would be applied to those rural ILECs whose high-cost support exceeds the 0.1 percent threshold. An audit requirement would be imposed only if the mechanism indicates that the carrier, whose high-cost support exceeds the 0.1 percent threshold, poses a significant risk of wrongdoing.

Together, these two "screening" tools – the percentage-based support threshold and the risk identification mechanism – would maximize the potential benefit that the High-Cost program derives from independent audits that are performed on rural ILECs. At the same

[4] *Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Fourth Quarter 2005*, (August 2, 2005), Appendix HC01. For 4th quarter 2005, USAC projects a total High-Cost fund size of $1,012,882,692. Therefore, using a threshold of 0.1 percent, rural ILECs that fell below a quarterly support amount of $1,012,883 would be automatically exempt from an independent audit requirement.

time, any unnecessary administrative and resource burdens imposed on rural carriers, as well as the Commission and the USF administrator, will be kept to a minimum.

For those rural ILECs that may be subjected to an independent audit requirement, the Commission should permit the auditing firm that normally reviews the carrier's financial statements and internal controls to simultaneously audit their receipt and use of high-cost support. This would minimize redundancy and the inconvenience to rural carriers without sacrificing the value of the audit. The RUS already has various requirements that must be addressed in the Management Letter issued at the end of a borrower's financial audit. Compliance with High-Cost program rules and procedures could easily be added to those items that the auditor is required to address.

A rural ILEC and its customers should not be required to absorb the cost of an independent audit that is required by the Commission or USAC. Those costs should be considered an administrative expense of the USF. Even if the required audit of a rural ILEC is incorporated into the carrier's ordinary financial audit, the additional or incremental auditing costs that would otherwise not have been incurred but for the government's requirements should be absorbed by the USF. Having the USF absorb the costs of the audits will provide an incentive for the Commission and USAC to conduct a serious cost-benefit analysis prior to requiring an audit of any rural carrier, since the cost will be shared by all contributors to the USF, and ultimately consumers nationwide. If intentional waste, fraud, or abuse of the High-Cost program is discovered in the course of an audit, the Commission has the ability to impose penalties against the offender. In the alternative, Commission rules or USAC procedures could include a list of circumstances in which a carrier would be assessed some or all of the audit's cost if intentional misconduct is found.

It is important that any audits performed on rural ILECs, whether by USAC, an independent auditor, or the Office of the Inspector General (OIG), distinguish between fraud, negligence, and unintentional ministerial error. As the NPRM correctly states, there is a fundamental difference between ministerial errors and intentional fraud.[5] Indeed, a ministerial error can result from any number of small mistakes or typographical errors. Negligence is also distinct from intentional fraud. Negligence, for example, could result from a failure to correctly interpret complex or unclear rules or procedures. Instances of deliberate fraud would clearly be more serious. All audits of rural ILECs must recognize that neither ministerial error nor negligence rises to the same level as intentional fraud and should not be addressed in the same manner.

C. A mechanism to correct inaccurate high-cost support payments is already in place for rural ILECs

The Commission seeks comment on whether amounts disbursed from the High-Cost program in violation of the statute or Commission rules must be recovered in full.[6] For rural ILECs, NECA already reviews the data used to calculate the high-cost support amounts that they receive. If a discrepancy is discovered in the reported data, a recalculation of the carrier's support amount is made and the payment is corrected. The NPRM seems to suggest that audits will only uncover situations where a carrier has received an overpayment of high-cost support. However, audits may very well uncover situations where a rural ILEC's support disbursement was less than it should have been. In any case, there is a mechanism already in place for rural ILECs to correct inaccurate support payments.

[5] NPRM, ¶22.
[6] *Id*., ¶89.

D. Prior to imposing an independent audit requirement on USF contributors, the Commission should first determine if there is a pattern of non-compliance with the rules; if an independent audit requirement of USF contributors is adopted, a percentage-based contribution threshold should be established

The NPRM also considers whether the rules should require independent audits of USF contributors.[7] While the NPRM notes that the Commission's Enforcement Bureau regularly investigates contributor filings,[8] there is no indication whether these examinations have revealed any fraud, abuse, or patterns of underpayment. Without more information or evidence of persistent non-compliance with the Commission's contribution rules, it is difficult to comment on an independent audit requirement for contributors. As with high-cost support recipients, the Commission should first determine if there is a genuine need to increase its oversight of USF contributors before it imposes the concomitant costs and burdens on carriers, the government, the USF Administrator, and the USF itself.

If the Commission does determine that independent audits of contributors are necessary, a percentage-based contribution threshold should be established. The contribution threshold should be a percentage of the projected collected end-user telecommunications revenues for the total USF. This is because contributions are made to the entire USF and not any particular program.[9] In particular, OPASTCO and WTA recommend a threshold of 0.15 percent of the projected contribution base.[10] Contributors falling below this threshold should not be subject to an independent audit requirement.[11]

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[7] *Id.*, ¶80.
[8] *Id*.
[9] The reasoning behind a percentage-based contribution threshold, as opposed to a fixed dollar threshold, is the same as discussed above in Section II. B. regarding a threshold for high-cost support recipients.
[10] For example, the FCC projects the total collected end-user telecommunications revenues for 4th quarter 2005 to be $17.869740 billion. *Proposed Fourth Quarter 2005 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 05-2454 (Sept. 15, 2005). Therefore, using a threshold of 0.15 percent, any

III. THE COMMISSION'S EFFORTS TO IMPROVE THE USF APPLICATION AND DISBURSEMENT PROCESSES MUST AVOID IMPOSING UNNECESSARY ADMINISTRATIVE BURDENS ON RURAL ILECS

A. The existing high-cost reporting requirements for rural ILECs should remain in place; rural ILECs should not be required to certify the accuracy of their projections; and the Commission should not consolidate all of the rules governing the High-Cost program into a single section at this time

The existing reporting requirements for rural ILEC high-cost support recipients, which consist of mandatory annual filings, with optional quarterly updates for High-Cost Loop Support (HCLS), function well and should remain in place.[12] Furthermore, the Commission should not require rural ILEC high-cost support recipients to submit the same investment and expense information to USAC that they already submit to NECA.[13] This would be unnecessarily redundant and would impose a needless administrative burden on these carriers that operate with limited resources.

Because high-cost loop data collections are tightly integrated with other rural ILEC cost and demand data that is compiled by NECA, it is most efficient for NECA to continue to collect and validate all data. NECA has review procedures in place that are tried, proven, and enhance the integrity of the High-Cost program. Rural ILECs should not be required to file the same information with USAC as well.

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carrier that contributed less than $26.8 million for the quarter would be automatically exempt from an independent audit requirement. Note that on an annualized basis, a 0.15 percent threshold presently equates to a $107.2 million contribution, which is close to the $100 million annual contribution threshold proposed in the NPRM. NPRM, ¶80.

[11] Auditing carriers that contribute above a 0.15 percent threshold may have resulted in early detection of AT&T's unilateral decision to not contribute on the revenue earned from its "enhanced" prepaid calling cards. *See*, *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, *Regulation of Prepaid Calling Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4836, ¶30 (2005).

[12] NPRM, ¶48.

[13] *Id*.

If rural ILECs were required to submit to USAC the same data that they already provide to NECA, they would be forced to interact with two separate organizations, and comply with each of their distinct procedures both in the initial submission of the data and any follow-up that would inevitably occur. In addition, the inconsistent feedback that carriers would likely receive from two separate entities would further add to the administrative and bureaucratic burden. The end result for rural ILECs would be an administrative burden that far outweighs any perceived benefits.

The NPRM also seeks comment on the certification language in the existing application forms for the High-Cost program.[14] Rural ILEC high-cost support recipients should not be required to certify the accuracy of their projections and forecasts, which are nothing more than good-faith estimates based on reasonable judgment. Rural ILECs tend to incur greater fluctuations in the accuracy of their projections compared with their non-rural counterparts as a result of their small size and long, sporadic investment cycles. In addition, as hurricanes Katrina and Rita vividly demonstrated, external forces beyond the control of a carrier can significantly throw off a projection or forecast that has been made in good faith and with the best available information. Certainly, any high-cost carriers that were in the path of those hurricanes could not have reasonably predicted them and the impact they would have on their costs. The certification requirement for projections and forecasts should reflect these realities for rural ILECs and should be made to "the best knowledge and belief" of the certifying party.

[14] *Id*., ¶52.

In addition, the Commission should not consolidate all of the rules governing the High-Cost program into a single section at this time.[15] Presently, there are open proceedings at the FCC that are considering a long-term rural high-cost support mechanism[16] and a unified intercarrier compensation regime.[17] Were the High-Cost program rules to be consolidated now, it is likely that they would need to be changed again in the near future when new rules adopted in these related proceedings are codified. However, should the Commission decide to consolidate the High-Cost program rules into one section at this time, care must be taken to ensure that there are no unintended changes in the rules.

B. The disbursement process for the various High-Cost support mechanisms should not be combined; rural ILECs should not be required to pay interest on inaccurate disbursement estimates; and the date for submitting true-up data should not be changed

The disbursement process for the various support mechanisms within the High-Cost program should remain separate. Rate-of-return regulated rural ILECs have internal accounting processes in place to properly record the funds they receive from the various support mechanisms – HCLS, Interstate Common Line Support (ICLS), and Local Switching Support (LSS). Adopting a single, uniform disbursement process for all of these support mechanisms would require rural ILECs to expend limited resources modifying their accounting procedures. A change in the disbursement process could also alter a rural ILEC's cash flow which could be problematic for some carriers.

[15] *Id*., ¶47.
[16] *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004).
[17] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005).

The NPRM also seeks comment on whether rules should be adopted to provide for true-ups of amounts disbursed.[18] Specifically, it asks whether, as part of the true-up process, carriers should pay interest on the difference between projected and actual amounts if the projected amounts exceed actual amounts. As alluded to in Section III. A. above, rural ILECs experience greater fluctuations in their investments and expenses than do larger ILECs, due in part to their lumpy investment patterns. This increases the likelihood that rural ILECs' forecasts will deviate significantly from the costs they actually incur. Rural ILECs should not be required to pay interest as a result of good faith estimates that are subsequently found to be inaccurate.

In addition, the NPRM asks whether the Commission should require that data be submitted earlier in order to facilitate true-ups.[19] Currently, rural high-cost carriers are required to true-up their forecasted ICLS and LSS amounts by December of the subsequent year. This true-up date should not be changed given the fact that earlier true-ups may not capture corrections or adjustments that may be made as a result of the cost study process. In most cases, any changes to cost study data will have been made by December 31. Even though carriers are required to submit their completed cost studies to NECA by July 31, the last five months of the year allow carriers to make any needed corrections that they discover on their own, or that are identified as a result of NECA's review of the cost study and USF data.

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[18] NPRM, ¶61.
[19] *Id*.

IV. BEFORE CONTEMPLATING WHETHER OR NOT THE PERMANENT DESIGNATED USF ADMINISTRATOR SHOULD BE REPLACED, THE COMMISSION SHOULD ESTABLISH PERFORMANCE GOALS AND USE THEM IN A THOROUGH EVALUATION OF USAC

The Commission should not seek to replace the permanent designated administrator of the USF with another type of administrative structure or entity at this time.[20] It would be shortsighted to immediately seek to replace USAC without first conducting a thorough review of its performance. As the NPRM notes, the Commission had committed to review USAC's performance after one year, but this did not occur.[21]

Prior to conducting a performance review, the Commission should establish and make public specific performance goals or targets for the USF administrator[22] against which USAC's performance can be measured. Without the Commission first determining precisely what it expects of any administrator, replacing USAC would fail to serve any meaningful purpose. Once the Commission has reviewed USAC's performance with respect to the performance goals and targets, it should give USAC a reasonable opportunity to improve its performance in any area where it may fall short of expectations. Rural ILECs appreciate the consistency of being able to interact with the same administrator on a long-term basis. Therefore, replacing the permanent designated administrator with another structure or entity should be pursued only as a last resort.

[20] *Id*., ¶12.
[21] *Id*., ¶11.
[22] *Id*., ¶24.

V. USAC'S ABILITY TO REQUEST BORROWING AUTHORITY IS NECESSARY TO ENSURE THE CONTINUED PROVISION OF UNIVERSAL SERVICE IN HIGH-COST RURAL SERVICE AREAS IN THE EVENT OF AN UNFORESEEN SHORTFALL IN THE FUND

It is crucial for USAC to retain the ability to request authority from the Commission to borrow funds commercially if contributions in a given quarter are inadequate to meet the amount of USF payments and administrative costs for that quarter.[23] This ability ensures that support will continue to flow to recipients as scheduled, without disruptions. Many rural ILECs rely heavily on high-cost support as a means of cost recovery for network investments that have already been made. If support payments were disrupted, it could threaten rural ILECs' ability to make loan payments on schedule, delay planned network investments, and place upward pressure on local end-user rates. For these reasons, the Commission absolutely should not adopt a system for dealing with fund shortfalls where it seeks to collect additional funds and postpones payments until sufficient funds have been received. The impact of such a system would be entirely antithetical to the core purposes of the High-Cost program. While the need to request borrowing authority is unlikely, USAC should have this ability at its disposal in order to keep support flowing to recipients in the event of unforeseen circumstances.

VI. CARRIERS WHO ARE DELINQUENT IN MAKING USF CONTRIBUTIONS OR FILING FCC FORM 499-A SHOULD BE GIVEN A WARNING AND AN OPPORTUNITY TO PROVIDE AN EXPLANATION PRIOR TO ANY ASSESSMENT OF PENALTIES

There should be an initial warning for carriers that are delinquent in making their USF contributions or filing FCC Form 499-A.[24] Carriers should be given the opportunity to

[23] *Id*., ¶20.
[24] *Id*., ¶19.

provide an explanation for their delinquency before any interest or penalties are assessed. This process would be similar to how rural ILECs address end-user customers that are late in paying their phone bills. Carriers first notify customers of their delinquency before assessing any penalties or terminating service. Delinquent contributors should be treated in a similar manner.

VII. CONCLUSION

The Commission should seriously consider that several of the proposals put forth in this proceeding could impose administrative burdens on rural ILECs that far outweigh any perceived benefits. OPASTCO and WTA believe that the recommendations offered in these comments ensure that the benefits of effective USF management and oversight are not outweighed by unnecessary administrative burdens.

Specifically, a widespread, unfocused independent audit requirement is unnecessary for rural ILECs due to the multiple layers of review that their financial data is subject to. If, however, the Commission determines that independent audits of rural ILEC high-cost support recipients are absolutely necessary, the following recommendations should be adopted:

- An independent audit requirement should not apply to rural ILECs whose support level is below a threshold of 0.1 percent of the total size of the High-Cost program. For rural ILECs whose support level exceeds a 0.1 percent threshold, an independent audit requirement should be imposed only on those carriers that appear to pose a significant risk of wrongdoing.

- The costs of the High-Cost audits should be recognized as an administrative expense of the USF and should not be absorbed by rural ILECs or their customers.

- Any audits performed on rural ILEC high-cost support recipients should distinguish between fraud, negligence, and unintentional ministerial error.

- Prior to imposing an independent audit requirement on USF contributors, the Commission should first determine if there is a pattern of non-compliance with the rules. If an independent audit requirement of USF contributors is adopted, a contribution threshold of 0.15 percent of the projected contribution base of the total USF should be established.

In addition, efforts to improve the USF application and disbursement processes must not impose unnecessary administrative burdens on rural ILECs:

- The existing high-cost reporting requirements for rural ILECs should remain in place. Rural ILECs should not be required to submit data to USAC that they already submit to NECA.

- Rural ILECs should not be required to certify the accuracy of their projections.

- The Commission should not consolidate all of the rules governing the High-Cost program into a single section at this time.

- The disbursement process for the various High-Cost support mechanisms should not be combined.

- Rural ILECs should not be required to pay interest on inaccurate disbursement estimates.

- The date for submitting true-up data should not be changed.

Before contemplating whether or not the permanent, designated administrator of the USF should be replaced, the Commission should:

- Establish performance goals and use them in a thorough evaluation of USAC.

- Give USAC a reasonable opportunity to improve its performance in any area it may be failing to meet expectations, and consider replacing USAC with another structure or entity only as a last resort.

Finally, it is crucial for USAC to retain the ability to request authority from the Commission to borrow funds commercially if contributions in a given quarter are inadequate to meet the amount of USF payments and administrative costs. Also, carriers that are delinquent in making their USF contributions or filing FCC form 499-A should be given an initial warning and an opportunity to provide an explanation for their delinquency prior to any assessment of penalties or interest.

Respectfully submitted,

ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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October 18, 2005

Certificate of Service

I, Brian Ford, hereby certify that copies of OPASTCO and WTA's comments were sent on this, the 18th day of October, 2005 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

By: /s/ Brian Ford
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Service List
WC Docket No. 05-195, *et al*.
FCC 05-124

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